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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,804	12/21/2000	Robert Curley	O-226	6420
51444 7590 05/18/2010 Kraguljac & Kalnay, LLC - Oracle 4700 Rockside Road Summit Onc, Suite 510 Independence, OH 44131				
EXAMINER				
NGUYEN, THANH T				
ART UNIT		PAPER NUMBER		
2444				
NOTIFICATION DATE		DELIVERY MODE		
05/18/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mary@kkpatent.com

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### Office Action Summary

**Application No.**

09/740,804

**Applicant(s)**

CURLEY ET AL.

**Examiner**

TAMMY THANH NGUYEN

**Art Unit**

2444

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (3) MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 15 and 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15 and 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/C.3)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 8/8/01, 11/18/2002



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## Detailed Office Action

1. This action is in response to most recent papers received.
2. Claims 1-36 have been examined.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1, 3-14, 15-27, 29-35 are rejected under 35 U.S.C. 1031a} as being unpatentable over Pruthi et al. (US Patent Application Publication No. 2002/0105911, in view of Sweet et al (Publication No. US 2003/0115266 A1).
5. As per claim(s) 1 Pruthi discloses monitoring particular characteristics of transaction-based protocol exchanges to and/or from said node, (See Paragraph 0002); and deriving a plurality of different components including round-trip network latency in response to said monitoring, (See Paragraph

- 0033). However, Pruthi does not explicitly teach connection time, processing time, and remaining time.
6. In the same field of endeavor, Sweet discloses (e.g., evaluating computer resources). Sweet discloses teaches connection time, processing time, and remaining time as show in paragraphs 0018, 0034, and page.5, claim 16.
  7. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Sweet's teachings of a evaluating computer resource with the teachings of Pruthi, for the purpose mission-critical information and service and business partners [paragraph 005].
  8. As per claim(s) 3 Pruthi teaches the claimed invention as described in claim(s) 1 above and furthermore discloses monitoring TCP data packet acknowledgment; wherein TCP resides under the transport layer under the ISO/OSI layer thus residing between the application layer and data link layer, (See Paragraph 0033).
  9. As per claim(s) 4 Pruthi teaches the claimed invention as described in claim(s) 1-3 above and furthermore discloses monitoring TCP slow start turnaround; wherein interpreted as round trip delay, (See Paragraph 0033).
  10. As per claim(s) 5 Pruthi teaches the claimed invention as described in claim(s) 1-4 above and furthermore discloses monitoring TCP zero to non-zero window turnaround; wherein interpreted as round trip delay, (See Paragraph 0033).

11. As per claim(s) 6 Pruthi teaches the claimed invention as described in claim(s) 1-5 above and furthermore discloses monitoring TCP FIN bit acknowledgment, (See Paragraph 0067).
12. As per claim(s) 7 Pruthi teaches the claimed invention as described in claim(s) 1-6 above and furthermore discloses deriving and subtracting delays associated with processing by a further node communicating over the network with said first-mentioned node; wherein it is inherent to subtract delay of any sort in order to achieve best round trip times (See Paragraph 0062-0063).
13. As per claim(s) 8 Pruthi teaches the claimed invention as described in claim(s) 1-7 above and furthermore discloses monitoring and deriving steps are performed at a plurality of network sites remote from said node, or co-located with said node; wherein the monitoring agent is located in between the server and client and therefore interpreted as being located remotely, (See Paragraph 0062).
14. As per claim(s) 9 Pruthi teaches the claimed invention as described in claim(s) 1-8 above and furthermore discloses reporting said derived results, (See Paragraph 0052).
15. As per claim(s) 10 Pruthi teaches the claimed invention as described in claim(s) 1-9 above and furthermore discloses reporting step comprises generating a web page, (i.e., generated online), (See Paragraph 0133).
16. As per claim(s) 11 Pruthi teaches the claimed invention as described in claim(s) 1-10 above and furthermore discloses providing a web-page-based report over said network, (i.e., generated online), (See Paragraph 0133).

17. As per claim(s) 12 Pruthi teaches the claimed invention as described in claim(s) 1-11 above and furthermore discloses monitoring and deriving steps are performed on a subscription basis; wherein selecting a hyperlink is interpreted as subscribing to access monitoring data, (See Paragraph 0132).
18. As per claim(s) 13 Pruthi teaches the claimed invention as described in claim(s) 1-12 above and furthermore discloses coupling a monitoring node to said network and operating the monitoring node in a promiscuous mode, (See Paragraph 0035).
19. As per claim(s) 15 Pruthi discloses initiating a monitoring subscription over the Internet, including obtaining at least one network address to be monitored, (See Paragraph 0002); remotely monitoring, over said network, transactions involving said network address, (See Paragraph 0062); and deriving network latency and device latency in response to said monitoring, (See Paragraph 0033).
20. However, Pruthi does not explicitly teach connection time, processing time, and remaining time.
21. In the same field of endeavor, Sweet discloses (e.g., evaluating computer resources). Sweet discloses teaches connection time, processing time, and remaining time as show in paragraphs 0018, 0034, and page.5, claim 16.
22. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Sweet's teachings of a evaluating computer resource with the teachings of

Pruthi, for the purpose mission-critical information and service and business partners [paragraph 005].

23. As per claim(s) 19 Pruthi discloses monitoring TCP traffic between a server and client; and using IP Header sequence number to help distinguish out-of-order TCP packets from retransmitted TCP data packets each carrying HTTP data, (See Paragraph 0047).
24. As per claim(s) 20 Pruthi discloses monitoring TCP traffic between a server and client and using an initial exchange between said server and said client and TCP header flags to determine whether an initial HTTP reply is retransmitted, (See Paragraph 0120-0132).
25. However, Pruthi does not explicitly teach connection time, processing time, and remaining time.
26. In the same field of endeavor, Sweet discloses (e.g., evaluating computer resources). Sweet discloses teaches connection time, processing time, and remaining time as show in paragraphs 0018, 0034, and page.5, claim 16.
27. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Sweet's teachings of a evaluating computer resource with the teachings of Pruthi, for the purpose mission-critical information and service and business partners [paragraph 005].
28. As per claim(s) 21 Pruthi teaches the claimed invention as described in claim(s) 20 above and furthermore discloses using retransmission time as time

- to discount when calculating web server processing time, (See Paragraph 0041-0050).
29. As per claim(s) 22 Pruthi teaches the claimed invention as described in claim(s) 20-21 above and furthermore discloses using retransmission time as time to discount when calculating TCP connect processing time, (See Paragraph 0041-0050). 26. As per claim(s) 23 Pruthi teaches the claimed invention as described in claim(s) 20-22 above and furthermore discloses continually calculating transport-to-transport network latency to obtain minimum network latency for at least one TCP session, (See Paragraph 0059-0066).
30. As per claim(s) 24 Pruthi teaches the claimed invention as described in claim(s) 20-23 above and furthermore discloses using round trip network latency as time to discount when calculating web server processing time, (See Paragraph 0127).
31. As per claim(s) 25 Pruthi teaches the claimed invention as described in claim(s) 20-24 above and furthermore discloses using round-trip network latency as time to discount when calculating TCP connect processing time, (See Paragraph 0122-0130).
32. As per claim(s) 26 Pruthi discloses monitoring protocol traffic between a client and a server over the network; continually calculating network retransmission time, (See Paragraph 0060-0063); and taking said calculated network retransmission time into account when computing web server processing time and TCP connect time and the number of packets lost, said

computing taking into account said calculated network retransmission time (See Paragraph 0064-0068).

33. As per claim(s) 27 Pruthi discloses monitoring HTTP protocol traffic between a web client and a web server over a network, (See Paragraph 0131); and using an HTTP initial request and reply to determine if the content of at least one web page hosted by the web server is static or dynamic, (See Paragraph 0122-0131).
34. As per claim(s) 29 Pruthi discloses monitoring particular characteristics of wireless transaction-based protocol exchanges to and/or from said node, (See Paragraph 0002); and deriving round-trip network latency of said wireless network in response to said monitoring, (See Paragraph 0033). However, Pruthi does not explicitly teach connection time, processing time, and remaining time.
35. In the same field of endeavor, Sweet discloses (e.g., evaluating computer resources). Sweet discloses teaches connection time, processing time, and remaining time as show in paragraphs 0018, 0034, and page.5, claim 16.
36. Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Sweet's teachings of a evaluating computer resource with the teachings of Pruthi, for the purpose mission-critical information and service and business partners [paragraph 005].
37. As per claim(s) 30 Pruthi teaches the claimed invention as described in claim(s) 29 above and furthermore discloses receiving requests and responses

from at least one node located remotely from said receiver on the network; isolating features of received requests and responses and logging times associated with each; and calculating, in response to said logging, latency associated with said network and latency associated with said node, (See Paragraph 0073-0078).

38. As per claim(s) 31 Pruthi teaches the claimed invention as described in claim(s) 29-30 above and furthermore discloses monitoring HTTP traffic flowing between a web server and web client over the wireless network, (See Paragraph 0131); and using the web server's initial HTTP reply packet as the logical dividing line for web client to web server HTTP packet exchange, wherein said logical dividing line is used to distinguish initial web server reply time from wireless network transport time, (See Paragraph 0122-0131).
39. As per claim(s) 32 Pruthi teaches the claimed invention as described in claim(s) 29-31 above and furthermore discloses the monitoring step includes using an IP header sequence number to help distinguish out-of-order TCP packets from retransmitted TCP data packets each carrying HTTP data, (See Paragraph 0047).
40. As per claim(s) 33 Pruthi teaches the claimed invention as described in claim(s) 29-32 above and furthermore discloses monitoring step includes using an initial exchange between said server and said client and TCP header flags to determine whether an initial HTTP reply is retransmitted, (See Paragraph 0033 & 0129).

41. As per claim(s) 34 Pruthi teaches the claimed invention as described in claim(s) 29-33 above and furthermore discloses continually calculating network retransmission time; and taking said calculated network retransmission time into account when computing web server processing time and TCP connect time and the number of packets lost, said computing taking into account said calculated network retransmission time (See Paragraph 0073-0082).
42. As per claim(s) 35 Pruthi teaches the claimed invention as described in claim(s) 29-34 above and furthermore discloses using an HTTP initial request and reply to determine if the content of at least one web page hosted by the web server is static or dynamic, (See Paragraph 0134).
43. Claims 2, 28, 36 are rejected under 35 U.S.C. 1031a} as being unpatentable over Pruthi et al. (US Patent Application Publication No. 2002/0105911 and Pruthi hereinafter in view of Colby et al (US Patent No. 6,449,647 and Colby hereinafter) and further in view of in view of Sweet et al (Publication No. US 2003/0115266 A1).
44. As per claim 2 Pruthi discloses the claimed invention as described above. However, Pruthi does not explicitly teach monitoring step includes monitoring SYN bit acknowledgment. Colby teaches monitoring step includes monitoring SYN bit acknowledgment, (See Column 7 Lines 17-2). Therefore it would have been obvious to a person having ordinary skill in the art at the time of

Applicant's invention to modify the teaching of Pruthi with the teachings of Colby to include monitoring step includes monitoring SYN bit acknowledgment with the motivation to provide for performing server selection, a server in the same continent as the client is preferred over servers in another continent. Trans-continental network links introduce delay and are frequently congested. The server selection process tends to avoid such trans-continental links and the bottlenecks they introduce, (See Colby Column 3 Line 65 through Column 4 Line 5).

45. As per claim(s) 28 Pruthi discloses monitoring communications between said web server and at least one client, (See Paragraph 0120-0130); However, Pruthi does not explicitly teach discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time. Colby teaches discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time (See Column 7 Lines 17-2). Therefore it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to modify the teaching of Pruthi with the teachings of Colby to include discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time with the motivation to provide for performing server selection, a server in the same continent as the client is preferred over servers in another continent. Trans-continental network links introduce delay and are frequently congested. The server selection process tends to avoid such trans-continental

links and the bottlenecks they introduce, (See Colby Column 3 Line 65 through Column 4 Line 5).

46. As per claim(s) 36 Pruthi discloses the claimed invention as described above. However, Pruthi does not explicitly teach discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time. Colby teaches discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time, (See Column 7 Lines 17-2). Therefore it would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to modify the teaching of Pruthi with the teachings of Colby to include discounting at least one retransmitted HTTP Get or HTTP Post request from said client as web server processing time with the motivation to provide for performing server selection, a server in the same continent as the client is preferred over servers in another continent. Trans-continental network links introduce delay and are frequently congested. The server selection process tends to avoid such trans-continental links and the bottlenecks they introduce, (See Colby Column 3 Line 65 through Column 4 Line 5).

### ***Conclusion***

47. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

48. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
49. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammy T. Nguyen whose telephone number is 571-272- 3929. The examiner can normally be reached on Monday - Friday 8:30 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *William Vaughn* can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the

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Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TAMMY THANH NGUYEN/

Primary Examiner, Art Unit 2444